IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 67 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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VASANTBHAI SAPOVADIYA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 67 of 1997

MR YOGESH S LAKHANI for Petitioner No. 1

MR AJ DESAI, ADDL.PUBLIC PROSECUTOR for Respondent No. 1

MS RV ACHARYA for Respondent No. 2

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 02/04/2002

ORAL JUDGEMENT

#. This is an application under Section 482 of the Criminal Procedure Code, 1973, for quashing a complaint being Criminal Case No.428/1994 pending before the

learned JMFC, Upleta in Rajkot District for the offence punishable under Section 491 of the I.P.C.

#. Respondent No.2 herein appears to be a practicing advocate of Upleta and he has filed the aforesaid complaint before the said Court. The main contention of the complainant in the said complaint is that on 20.6.1994 he had some eye trouble and, therefore, on 27.6.1994 he approached the present petitioner for his eye treatment. The present petitioner is an Eye Surgeon practicing as such at Upleta. It appears that the present petitioner did not attend the contesting respondent after his arrival in the dispensary and, therefore, the contesting respondent entered the Chamber of the petitioner. At that time, according to the case of the contesting respondent, the petitioner was taking tea and he did not examine him very soon, therefore the contesting respondent approached another Eye Surgeon Dr.Joshi, who gave him prompt treatment and could save his eye and it is therefore the contention of the contesting respondent that the petitioner was bound to examine the contesting respondent and he refused to do so and, thereby he committed the offence punishable under Section 491 of the I.P.C. and, therefore, the said complaint was filed.

#. On receiving the said complaint the learned Magistrate directed to register the same, the learned Magistrate also directed to issue summons to the present petitioner. The present petitioner has come with this application for quashing the same. It is mainly contended that no offence is made out on bare reading of the complaint and, therefore, the complaint deserves to be quashed.

#. The offence alleged is one punishable under Section 491 of the I.P.C. It would be worthwhile to reproduce the same for ready reference hereinbelow.

"Section 491 :- Breach of contract to attend on and supply wants of helpless person.- who ever, being bound by a lawful contract to attend on or to supply the wants of any person who, by reason of youth, or of unsoundness of mind, or of a disease or bodily weakness, is helpless or incapable of providing for his own safety or of supplying his own wants, voluntarily omits so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees or with both."

On a bare reading of Section 491 of the I.P.C. it is very clear that the person against whom the complaint can be filed for an offence under Section 491 of the I.P.C. must be a person has to be a lawful contractor to attend on or supply wants of any person who is by reasons of youth or by unsoundness of mind or of a disease or bodily weakness is helpless or incapable, of providing for his own safety or of supplying his own wants voluntarily omits so to do and if that fact is established then he shall be punished with imprisonment with either description for a term which may extend to three months.

#. This means that the person against whom the complaint for the aforesaid offence can be filed must be one described as above. In other words, he must be a person bound by a contract to attend the person concerned. In the present case there is no mention in the complaint that there was a contract between the parties to attend the contesting respondent.

#. Even otherwise other ingredients of this Section have not been allegedly present and, therefore, even prima facie no offence is made out.

#. Even otherwise the FIR does not show that the present petitioner had refused to attend the contesting respondent. The contesting respondent was required by the petitioner to sit and to wait for some time. After all, the petitioner was a practicing Eye Surgeon and ordinarily he would attend the patient according to their time of arrival or according to the appointment. There is nothing on record to show that the contesting respondent had obtained previous appointment and yet his examination was refused. It is also not stated in the complaint that the turn of the respondent had come and yet he was not attended.

#. In above view of the matter, the required ingredients of Section 491 of the I.P.C. have not been made out and, therefore, no offence can be said to have been constituted.

#. Unfortunately the learned advocate for contesting respondent was not present on a previous occasion and even today he is not present before the Court for rendering assistance.

##. The learned APP Mr.V.M.Pancholi, appearing for respondent No.1 - State of Gujarat, states that no offence is made out and, therefore, the complaint in

question deserves to be quashed. For the foregoing reasons I am of the opinion that no offence as stated in the complaint can be said to have been constituted and when no offence is made out, it is not necessary for the present petitioner to wait for the final disposal of the case and to go on appearing before the Court below till the final disposal of the case.

##. For the reasons stated hereinabove the present application is allowed. Criminal Case No.428/1994 pending before the learned Judicial Magistrate Fist Class, Upleta is ordered to be quashed. Rule is made absolute to above extent.

(D. P. BUCH, J.)
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